

### **REMARKS**

This is in response to the Office Action dated October 14, 2008. Applicant has amended the application as set forth above. In more specific, claims 3 and 4 have been canceled without prejudice, and claims 1, 2, and 5 have been amended. All the features of the amended claims are fully supported by the originally filed application. Thus, the amendments do not add new matter to the application. Upon the entry of the amendments, claims 1, 2, and 5 are pending in this application. Applicant respectfully requests the entry of the amendments and reconsideration of the application.

#### **Discussion of Objections to Drawings**

The Examiner requires that Fig. 1 must be added with --Prior Art--. Also, the Examiner objected to the drawings under 37 CFR 1.83(a) for not showing every feature of the invention specified in the claims, regarding to the mechanism and the band being “detachable” (claim 4).

In response, Applicant has added -- Prior Art -- in Fig. 1, and has cancelled Claim 4 without prejudice. Withdrawal of the objections to the drawings is respectfully requested.

#### **Claim Rejections under 35 U.S.C. §112**

The Examiner rejected Claim 4 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement, and Claims 3 and 5 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In response, Applicant has cancelled Claims 3 and 4, and amended Claim 5 to get rid of the indefiniteness from the claims as shown in the Claim Amendments. Therefore, the rejections to Claims 3 and 4 are now moot, and the indefiniteness of the original Claim 5 has been removed. Withdrawal of the rejections is requested respectively.

#### **Claim Rejections under 35 U.S.C. §102**

The Examiner rejected Claims 1-5 under 35 U.S.C. §102(b) as being anticipated by US 2297657 (L'Hollier). In response, Applicant has amended Claim 1 to clarify the inventive points of the present invention.

Amended Claim 1 of the Instant Application (*Emphasis added*)

A shoe comprising:  
a sole member;  
a upper member, a top portion of which being incised from a top flank (22) to an end (21);  
a stabilizing band connected to the top of the incised upper member; and  
a mechanism (50) that combines the upper member, wherein the mechanism is directly connected to the stabilizing band (30).  
wherein when the stabilizing band is removed outward the incised upper member is opened automatically.

L'Hollier Does Not Anticipate Claim 1

The present invention is directed to a shoe including a upper member, a stabilizing band, and a mechanism, in which i) the top portion of the upper member is incised from a top flank to an end of the upper member, ii) the stabilizing band is connected to the top of the incised upper member, iii) the mechanism combines the upper member, and iv) the mechanism is directly connected to the stabilizing band, such that wherein when the stabilizing band is removed outward the incised upper member is opened automatically.

In contrast, L'Hollier discloses a quickly removable boot, which includes a strap (27) has one end secured pivotally, as by a tubular rivet (28), to the tab of the slider, and the opposite end is removably secured to the upper at a position above the slider along the margin of the vent by snap-fastener elements (29, 30) secured to the strap and upper respectively and engageable with each other when the slider is at its lowest position (See Fig. 1: page 2, col. 1, lines 7-20).

The Examiner stated "*L'Hollier teaches... an upper member (12) incised from the top to the end of upper, a stabilizing band (strap 27) combined directly with a zipper mechanism (25, 26).*" Applicant respectfully disagrees with the Examiner.

First, L'Hollier does not teach "a top portion of the upper member that is incised from a top flank to an end of the upper member" of the present invention. L'Hollier's quarters (12) or the vent (14) is NOT incised from the top flank to the end of the upper member. The upper is formed with a vent (16) extending from near the sole to the top of the upper and preferably at the front of the boot. (See page 1, col. 2, lines 17-19)

Second, L'Hollier does not teach “the stabilizing band connected to the top of the incised upper member of the present invention.” L'Hollier's strap (27) is not a stabilizing band. Considering the structure and function of the stabilizing band (30) of the present invention (connected to the top of the incised upper member, and holding or stabilizing the incised upper member), L'Hollier's strap (27) is NOT connected to the top portion of the quarters (12) or the vent (16), and does NOT hold the quarters together. The strap (27) is just for providing a strut to manipulate the slider easily.

Third, L'Hollier does not teach “the mechanism directly connected to the stabilizing band, such that when the stabilizing band is removed outward the incised upper member is opened automatically” of the present invention. Further, L'Hollier's strap (27) is not connected to the top portion of the quarters (12), thus not holding the quarters (12) or the vent (16). Therefore, the outwardly-removing motion cannot be applied to the strap (27), and the motion is not associated with the unzipping of the vent (16).

Applicant submits that the location or motion of the stabilizing band (30) of the instant application dictates the location or motion of the mechanism for closing and opening the incised upper member. In L'Hollier's boot, in contrast, the strap (27) is just a handle for the slider. The strap and the slider are not separate elements cooperating with each other. They do not have different functions as in the present invention. In the present invention, however, the stabilizing band is for stabilizing or holding the incised upper member together, the mechanism is for opening or closing the incised portion of the upper member, and since the two elements are connected to each other, they can perform their own functions separately, but at the same time by a single type of motion of the user.

Therefore, L'Hollier does not anticipate all the features of the present invention as discussed above. Applicant respectfully requests withdrawal of the rejections.

#### Dependent Claims 2 and 5

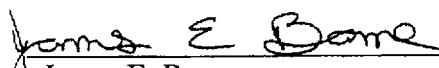
Although applicant has not addressed all the issues of the dependent claims, applicant respectfully submits that applicant does not necessarily agree with the characterization and assessments of the dependent claims made by the examiner, and applicant submits that each claim is patentable on its own merits. Claims 2 and 5 depend directly from Claims 1. Therefore, Applicant respectfully requests prompt allowance of the claims.

Conclusion

In view of the amendments and remarks made above, it is respectfully submitted that claims 1, 2, and 5 are in condition for allowance, and such action is respectfully solicited. If it is believed that a telephone conversation would expedite the prosecution of the present application, or clarify matters with regard to its allowance, the Examiner is invited to contact the undersigned attorney at the number listed below.

Respectively submitted,

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